

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Igor Volynets	Team: Team # 6	CCRB Case #: 200708417	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/13/2007 3:24 PM	Location of Incident: 165th Street and Jamaica Avenue, in front of the Tabernacle of Prayer Church	Precinct: 103	18 Mo. SOL 12/13/2008	EO SOL 12/13/2008	
Date/Time CV Reported Thu, 06/14/2007 12:07 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/14/2007 12:07 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Zozzaro	28340	942747	103 PCT
2. Officers			
3. POF Christina Farrell	30188	942779	103 PCT
4. POF Theresa Sesso	19438	939453	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Senice Lewis	20765	940381	103 PCT
2. POF Tricia Warner	10895	942688	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Zozzaro	Abuse: PO James Zozzaro questioned § 87(2)(b)	
B.POM James Zozzaro	Abuse: PO James Zozzaro stopped § 87(2)(b)	
C.POM James Zozzaro	Force: PO James Zozzaro used physical force against § 87(2)(b) .	
D.POF Theresa Sesso	Force: PO Theresa Sesso used physical force against § 87(2)(b) .	
E.POF Theresa Sesso	Force: PO Theresa Sesso used pepper spray against § 87(2)(b) .	
F.POF Christina Farrell	Force: PO Christina Farrell used physical force against § 87(2)(b) .	
G. Officers	Force: Officers used physical force against § 87(2)(b)	

Synopsis

At approximately 3:20 PM on June 13, 2007, § 87(2)(b) was walking with § 87(2)(b) near 165th Street and Jamaica Avenue in Queens when he was stopped by PO James Zozzaro. PO Zozzaro asked § 87(2)(b) for his ID and told him to take off his red bandanna because there is a high level of gang activity in the area (Allegation A). § 87(2)(b) showed his ID but refused to take off his bandanna and PO Zozzaro stated that he wanted to speak to his supervisor about the “do-rag policy.” A crowd formed and PO Zozzaro radioed additional officers for assistance. PO Zozzaro grabbed § 87(2)(b) in an attempt to keep him from leaving (Allegation B). Several officers, including PO Senice Lewis, PO Christina Farrell, and PO Tricia Warner approached § 87(2)(b). PO Theresa Sesso showed up at the location several minutes later and witnessed § 87(2)(b) struggling with the officers. PO Sesso grabbed § 87(2)(b) and pepper sprayed him (Allegations C and D). PO Christina Farrell and additional other officers arrived and finally succeeded in handcuffing § 87(2)(b) by grabbing his arms and feet (Allegations E, F, and G). § 87(2)(b) was arrested § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) CCRB Statement (Encl. 10a-g)

§ 87(2)(b) § 87(2)(b) -old African-American male, 5’11”, 275 lbs, with brown hair and brown eyes) contacted the CCRB via telephone on June 14, 2007. He was interviewed at the CCRB on July 12, 2007.

§ 87(2)(g)

On June 13, 2007 at about 3:24 PM, § 87(2)(b) and his friend § 87(2)(b) were walking on the sidewalk of Jamaica Avenue in Queens, near 165th Street. § 87(2)(b) recalled wearing a black sweater, black long-sleeved shirt, blue jeans, and a blue Yankee fitted hat. He was not wearing anything else on his head. § 87(2)(b) was wearing a gray tee-shirt and dark blue jeans. They were shopping for designer shirts. When § 87(2)(b) and § 87(2)(b) walked to the intersection of Jamaica Avenue and Guy R. Brewer Boulevard, § 87(2)(b) saw PO James Zozzaro (Caucasian / Italian male, 6’2”-6’3”, brown eyes, short brown hair, husky build, 275-300 lbs, 24-25 years old) standing with an African-American female partner, later identified as PO Tricia Warner. PO Zozzaro stopped § 87(2)(b) and asked to see his ID. When § 87(2)(b) asked PO Zozzaro why he was being stopped, PO Zozzaro said, “I’ve seen you walking around Jamaica Avenue too much.” § 87(2)(b) showed his ID but told PO Zozzaro that he wanted to talk to a “superior officer.” § 87(2)(b) remained calm and did not say anything else to PO Zozzaro. PO Zozzaro did not say anything to § 87(2)(b) who was standing next to § 87(2)(b). § 87(2)(b) and § 87(2)(b) started walking in the direction of the 103rd Precinct, located on 168th Street. PO Zozzaro followed the men for about four blocks, all the way to 165th Street. PO Zozzaro did not say anything as he was following them. § 87(2)(b) did not see or hear the officer make any radio calls as he followed the individuals.

On 165th Street and Jamaica Avenue, right next to the Tabernacle of Prayer Church, approximately fifteen uniformed police officers ran up to § 87(2)(b) and started to “attack” him. PO Zozzaro grabbed § 87(2)(b)’s right side, while another white male officer who § 87(2)(b) did not see clearly grabbed his left side. The officers were holding § 87(2)(b) down and were kicking at his legs. PO1, (Caucasian female, 5’10”, blond hair, dark blue eyes, slim build, 170 lbs, 29-30 years old, in uniform, identified through an investigation to be PO Theresa Sesso) approached § 87(2)(b) from the front and grabbed one of his arms.

On June 13, 2007 at about 3:30 PM, § 87(2)(b) and § 87(2)(b) were walking down Jamaica Avenue in Queens, near 165th Street. § 87(2)(b) was wearing a do-rag on his head. § 87(2)(b) did not remember the color of the do-rag. PO1, (Caucasian male, 6', 180 lbs, with short trimmed brown or black hair, in uniform, identified as PO James Zozzaro) stopped § 87(2)(b) and told him to take off the do-rag. § 87(2)(b) asked PO Zozzaro why. § 87(2)(b) did not understand why he had to take off his do-rag when he was outside. PO Zozzaro asked him to take the do-rag off again but § 87(2)(b) refused. § 87(2)(b) said that he wanted to go the precinct stationhouse and speak to PO Zozzaro's captain about the do-rag policy. PO Zozzaro told him to stay put and not to move. § 87(2)(b) said that he could walk to the precinct with PO Zozzaro. § 87(2)(b) saw PO Zozzaro take out a cell phone and speak to someone. PO Zozzaro told § 87(2)(b) to move several steps back so that § 87(2)(b) would not hear what PO Zozzaro was saying on the phone. § 87(2)(b) insisted that he was going to the precinct and that PO Zozzaro could follow him if he wanted to.

Suddenly, four or five marked RMP cars drove up to the location. At least 10 officers were on the scene. Three officers grabbed one of § 87(2)(b)'s arms while three more grabbed the other arm. PO2 (Caucasian female, long straight blond hair in ponytail, 6'1", slim build, identified as PO Theresa Sesso) maced § 87(2)(b). PO3 (African-American female, 5', short height, thin build, identified as PO Senice Lewis) was one of the officers holding on to § 87(2)(b)'s arms. PO Sesso's mace accidentally got into PO Lewis's eyes. Most of the officers were trying to get § 87(2)(b)'s hands behind his back but he continued to twist his hands back. Some of the officers had their knees on § 87(2)(b)'s back. Aside from refusing to place his hands behind his back, § 87(2)(b) was simply standing there, asking, "why do you want to put me under arrest?" § 87(2)(b) was not cursing or using any profane language. After the incident was almost over and § 87(2)(b) was already placed in handcuffs, a male officer in a white shirt who may have been a Lieutenant arrived on the scene. This officer was either Caucasian or Hispanic and had short black hair and looked tall and muscular. This officer just wanted to know what was going on and did not have any contact with § 87(2)(b). All of the officers except the male in the white shirt were in uniform.

None of the officers made any verbal or physical contact with § 87(2)(b) as the struggle with § 87(2)(b) was going on. None of the officers asked § 87(2)(b) for his information.

A crowd of at least 20 people assembled and witnessed the incident right next to the Tabernacle church on 165th Street. An acquaintance of § 87(2)(b) was on the scene and tried to tape the incident with his camera phone. § 87(2)(b) did not know who this may have been.

PO James Zozzaro UF 61 (Encl. 12a-b)

On June 13, 2007 at about 3:20 PM on the north east corner of Jamaica Avenue and 165th Street in Queens, PO James Zozzaro attempted to stop and issue a summons to § 87(2)(b) § 87(2)(b). § 87(2)(b) refused to provide identification. § 87(2)(b) § 87(2)(b)

PO James Zozzaro OLBS (Encl. 13a-b)

On June 13, 2007 at about 3:20 PM on the north east corner of Jamaica Avenue and 165th Street in Queens, PO James Zozzaro attempted to stop and issue a summons to § 87(2)(b) § 87(2)(b). § 87(2)(b) refused to provide identification. § 87(2)(b) § 87(2)(b). The arrest report indicates that force and a "chemical agent" were used to restrain, control and remove the defendant. § 87(2)(b) was charged § 87(2)(b)

PO James Zozzaro Criminal Court Complaint (Encl. 14a)

PO Zozzaro testified that he observed § 87(2)(b) standing in the middle of the public sidewalk refusing to move. § 87(2)(b) also refused to provide his identification to PO Zozzaro upon request. § 87(2)(b) additionally resisted arrest by flailing his arms, kicking with his feet, and refusing to be handcuffed.

PO James Zozzaro Memo Book Entry (Encl. 15a-c)

PO Zozzaro had several entries in his memo book that pertained to the incident involving § 87(2)(b). At 3:25 PM on June 13, 2007, PO Zozzaro stopped one male § 87(2)(b) at which time the male left the scene. PO Zozzaro, PO Sesso, PO Lewis, PO Warner, and PO Farrell stopped the male. The defendant began swinging and kicking when asked to place his hand behind his back. The defendant was maced and PO Farrell and PO Zozzaro took him to the ground. At 3:35 PM, PO Zozzaro transported the defendant to the 103rd Precinct, where his paperwork, photos, and fingerprinting was conducted.

PO James Zozzaro CCRB Statement (Encl. 16a-b)

PO James Zozzaro (Caucasian male, 6'5", 240 lbs, with brown hair and blue eyes) was interviewed at the CCRB on July 26, 2007. On June 13, 2007, PO Zozzaro was working the hours of 1430 to 2305. He was assigned to a foot post and was working alone. He was dressed in uniform.

On June 13, 2007 at about 3:25 PM, PO Zozzaro saw § 87(2)(b) walking down the street near the corner of 164th Street and Jamaica Boulevard in Queens. PO Zozzaro did not recall if § 87(2)(b) was walking alone. PO Zozzaro stated that the 103rd Precinct has a high level of gang activity and that the Commanding Officer issued an order that prohibited the wearing of "gang colors." PO Zozzaro saw § 87(2)(b) wearing a red bandanna. PO Zozzaro asked § 87(2)(b) to take the bandanna off. PO Zozzaro never told § 87(2)(b) that "he was hanging out on Jamaica Avenue too much." § 87(2)(b) told PO Zozzaro, "It's just a bandanna. Go fuck yourself" and walked away. § 87(2)(b) came back five minutes later and told PO Zozzaro, "you fucking pig. I ain't taking no shit from you. You ain't gonna do shit about it." At this point, a large crowd of between 50 and 100 people started gathering and people could not get by to where they were going. PO Zozzaro told § 87(2)(b) "step over here and let me see your license" in order to issue § 87(2)(b) a summons § 87(2)(b). § 87(2)(b) refused to provide any documentation and yelled out, "I ain't giving you shit." § 87(2)(b) began to quickly jog away and continued to jog for one block. PO Zozzaro did not pursue § 87(2)(b) but placed a radio call for assistance at the corner of 165th Street and Jamaica Avenue.

As soon as PO Zozzaro put the radio call out, PO Sesso, PO Lewis, PO Farrell, and PO Warner, who were stationed to a foot post on 165th Street and Jamaica Boulevard, cut § 87(2)(b) off and stopped him. PO Lewis tried to speak to § 87(2)(b) but § 87(2)(b) violently pushed her away. PO Zozzaro and PO Farrell tried to get § 87(2)(b) down on the ground. PO Zozzaro did not recall which part of § 87(2)(b)'s body had made physical contact with. § 87(2)(b) pushed them away with both arms and started kicking at them with his feet. PO Sesso maced § 87(2)(b) and PO Farrell and PO Zozzaro were finally able to restrain § 87(2)(b) with his back on the ground. The struggle between § 87(2)(b) and the officers lasted between five and ten minutes.

PO Farrell received medical attention as a result of the physical struggle with § 87(2)(b). PO Zozzaro did not know if PO Farrell went on Line of Duty. No other officers were injured during the melee.

PO Zozzaro was unaware of the status of § 87(2)(b)'s arrest at the time of his CCRB interview.

PO Tricia Warner Memo Book Entry (Encl. 21a-c)

PO Tricia Warner had several memo book entries regarding the incident with § 87(2)(b). At the time and place of occurrence, PO Zozzaro called PO Warner on the radio asking her to stop a man. PO Warner asked him why and PO Zozzaro said that it was for "flagging." PO Zozzaro tried to stop the defendant but he walked off. The defendant began yelling and flared his arms, putting up a fight. At this time, other officers came and all tried to stop the defendant. A crowd started to gather. All the officers finally managed to stop and handcuff the defendant.

PO Tricia Warner CCRB Statement (Encl. 22a-b)

PO Tricia Warner (§ 87(2)(b)-old African-American female, 5'7", 147 lbs, with black hair and brown eyes) was interviewed at the CCRB on August 10, 2007. On June 13, 2007, PO Warner was working the hours of 1430-2305. She was assigned to Impact Post #3. PO Warner did not recall who she was working with. She was dressed in uniform and was working on foot and was stationed to the post located on 165th Street and Jamaica Avenue.

On June 13, 2007 at about 3:30 PM, PO Warner received a radio call from PO Zozzaro. PO Zozzaro told her that he was trying to stop a gentleman, § 87(2)(b). In the radio call, PO Zozzaro stated that § 87(2)(b) was stopped for “flagging,” or wearing of gang colors. PO Warner, who was stationed on a foot post on the corner of 165th Street and Jamaica Avenue, saw § 87(2)(b) walking briskly down the street with PO Zozzaro walking right behind him. § 87(2)(b) was walking alone and was talking to himself. PO Warner noticed a bandanna on § 87(2)(b)'s head. She did not recall the color of the bandanna. PO Warner stated that this is not considered a violation but that it is grounds for stopping and questioning someone about the potential affiliation with criminal gang activity. When PO Warner asked him to stop and told him she needed to speak to him, § 87(2)(b) yelled out “leave me the fuck alone!” § 87(2)(b) also started to throw both of his arms up and wave them around in an erratic and angry manner. PO Warner thought that § 87(2)(b) was about to swing at PO Zozzaro. PO Warner did not remember what happened immediately after this.

Several minutes later, a group of additional officers arrived at the location. PO Warner could not give an estimate of the number of officers who arrived. PO Warner, PO Zozzaro, and several other officers were trying to place § 87(2)(b)'s hands behind his back in order to handcuff him. § 87(2)(b) kept trying to twist his arms away and was fighting with the officers, kicking at them with his legs. PO Warner heard some officers tell § 87(2)(b) to stop fighting. § 87(2)(b) appeared very unruly and kept shouting profanities at the officers, screaming, “you all leave me the fuck alone!” PO Warner did not see anyone mace § 87(2)(b) but she heard one of the officers shout, “watch out!” so he may have been sprayed. It took at least one more minute for all of the officers to finally restrain § 87(2)(b). By the time that he was handcuffed, a crowd of people had assembled nearby on Jamaica Avenue. PO Warner could not give an estimate of the number of civilians present, though she said it was more than ten.

PO Warner did not push, kick, or shove § 87(2)(b) at any point and did not see any of the other officers make any excessive physical contact with § 87(2)(b). § 87(2)(b) was not injured to PO Warner's knowledge. PO Christina Farrell received some injuries from the incident. PO Warner did not know what these injuries were.

PO Warner did not know what § 87(2)(b) was arrested for.

PO Christina Farrell Memo Book Entry (Encl. 23a-c)

PO Farrell had several relevant memo book entries for the incident with § 87(2)(b). At 3:20 PM on June 13, 2007, PO Farrell indicated that PO James Zozzaro was following a black male who was refusing to stop. PO Farrell walked in front of the male to help PO Zozzaro. The male was refusing to stop. At the request of officers, the man refused to provide his identification and refused to be handcuffed, flailing his arms. PO Sesso maced the defendant, and he continued to refuse to provide his ID and to be handcuffed. Officers brought the defendant to the ground. PO Farrell handcuffed the defendant while engaging in a struggle with him and scraped her elbows and knees. At 3:35, PO Farrell reported to the precinct stationhouse.

PO Christina Farrell CCRB Statement (Encl. 24a-b)

PO Christina Farrell (§ 87(2)(b) old Caucasian female, 5'9", 135 lbs, with blond hair and brown eyes) was interviewed at the CCRB on August 14, 2007. On June 13, 2007, PO Farrell was working the hours of 1155-2030. She was working alone. She was assigned to foot patrol and was dressed in uniform.

On June 13, 2007 at about 3:20 PM, PO Farrell observed PO James Zozzaro follow and try to stop a black male, § 87(2)(b) across 165th Street and Jamaica Avenue in Queens. § 87(2)(b) was not stopping for PO Zozzaro. PO Farrell went across the street, positioned herself in front of § 87(2)(b) and tried to stop him. PO Farrell did not recall what § 87(2)(b) was wearing. She and § 87(2)(b) had a verbal confrontation in which she asked him several times to stop walking away. § 87(2)(b) would not stop for PO Farrell. § 87(2)(b) appeared very angry and “would not relax.”

PO Farrell then engaged in a physical struggle with § 87(2)(b). PO Sesso arrived on the scene seconds later. PO Sesso maced § 87(2)(b) to subdue him. PO Farrell did not remember how many times PO

Sesso maced him. The macing was not successful in getting § 87(2)(b) to calm down. As he was sprayed, § 87(2)(b) said, "it tastes like butter." § 87(2)(b) was flailing his arms around and would not stop. PO Farrell grabbed his left arm in an attempt to get him to calm down. PO Farrell handcuffed his hands from the front because he repeatedly refused to be handcuffed from the back. All the officers had to "hold" § 87(2)(b) as PO Farrell was handcuffing him. § 87(2)(b) got up several minutes later and the officers were able to successfully handcuff him from behind.

PO Farrell sustained scrapes to both of her elbows and knees because she ended up hitting the ground, with § 87(2)(b) getting on top of her. She received some bandages from an ambulance that arrived but she did not visit a hospital. She did not fill out a Line of Duty report for her injuries.

PO Farrell could not estimate the total number of officers or civilians on the scene. A large crowd formed during the incident.

PO Theresa Sesso CCRB Statement (Encl. 18a-b)

PO Theresa Sesso (§ 87(2)(b)-old Caucasian female, 6'0", 180 lbs, with blond hair and hazel eyes) was interviewed at the CCRB on August 10, 2007. On June 13, 2007, PO Sesso was working the hours of 0705-1540. She was working on a patrol assignment and was working with PO Senice Lewis. She was working in a marked car. She did not have any memo book entries regarding the incident with § 87(2)(b).

On June 13, 2007 at about 3:30 PM, PO Sesso arrived on 165th Street and Jamaica Avenue in response to a call for assistance when she saw PO James Zozzarro, PO Lewis, Tricia Warner, PO Christina Farrell, and other officers she could not identify trying to restrain a large young male, § 87(2)(b). A crowd formed and there were a lot of people walking by and observing § 87(2)(b) struggling with the officers. PO Warner and PO Farrell were trying to handcuff § 87(2)(b)'s hands behind his back. PO Sesso observed § 87(2)(b) push PO Farrell to the ground. § 87(2)(b) appeared irate and disorderly, and kept fighting and pushing the officers away. PO Sesso maced him once because he refused to cooperate. § 87(2)(b) responded to the mace by saying, "it tastes like butter." § 87(2)(b) continued to struggle with the officers even after being maced for at least two minutes. With the help of additional officers who had just shown up, § 87(2)(b) was finally handcuffed.

PO Farrell was injured as a result of the struggle with § 87(2)(b). PO Sesso received minor scratches on her arms from the incident.

PO Sesso did not recall if § 87(2)(b) was wearing a bandanna during the struggle. She was not aware of any rule that prohibited the wearing of anything resembling "gang colors," though she stated that such clothing was often used to "flag" other gang members.

PO Sesso did not know if anyone besides § 87(2)(b) was arrested in the incident.

PO Senice Lewis CCRB Statement (Encl. 20a-b)

PO Senice Lewis (§ 87(2)(b)-old African-American female, 5'3", 130 lbs, with brown hair and green eyes) was interviewed at the CCRB on August 7, 2007. On June 13, 2007, PO Lewis was working the hours of 0705-1540. She was assigned to work on SP10 or pick-up patrol. She was working with PO Theresa Sesso in a marked RMP. PO Lewis did not have any memo book entries for the incident with § 87(2)(b).

On June 13, 2007 at about 3:30 PM, PO Lewis received a 10:85 call, or a call for assistance, on her radio. She did not know which officer made the call. When she arrived at 165th Street and Jamaica Avenue in Queens, she noticed a huge crowd forming on the corner. She saw "a lot" of officers on the scene as well. PO Lewis did not remember exactly how many officers there were. § 87(2)(b) was already placed in handcuffs in the middle of the crowd. PO Lewis did not remember how § 87(2)(b) was positioned. PO Lewis stood with the crowd and did not get a chance to observe § 87(2)(b)'s physical state or demeanor. PO Lewis did not have any physical contact with § 87(2)(b) and did not see any other officers make any physical contact with him. PO Lewis did not recall what type of physical contact PO Sesso may have had with § 87(2)(b). PO Lewis did not recall if anyone else besides § 87(2)(b) was arrested at the scene.

Police Documents

The SPRINT for this incident, received on June 25, 2007, indicates that at 3:28 and 3:29 PM, a lieutenant and an officer from the 103rd Precinct foot post arrived on the scene (Encl. 29a-c). At § 87(2)(b), an officer sustained minor cuts and an ambulance was called. At 3:53 PM, one defendant was placed under arrest. At 3:56 PM, the injured officer and the defendant were transported to the 103rd Precinct stationhouse. The Tour 2 and Tour 3 roll call, received on August 17, 2007, shows that PO Zozzaro, PO Warner, PO Sesso, PO Lewis, and PO Farrell were all working on June 13, 2007 (Encl. 26a-l and 27a-n). The command log for June 13, 2007 indicates that PO Zozzaro was § 87(2)(b)'s arresting officer (Encl. 28a). § 87(2)(b)'s physical condition is listed as “apparently normal.” The Medical Treatment of Prisoner form, received by the CCRB on August 24, 2007, indicates that § 87(2)(b) was maced prior to being removed to the precinct for arrest processing. No injuries are specified on the form (Encl. 25a).

Complainant CCRB History (Encl. 6a)

§ 87(2)(b) has two other CCRB complaints. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Officer CCRB History (Encl. 3a, 4a, and 5a)

PO Zozzaro, PO Sesso, and PO Farrell have never been disciplined as a result of a CCRB complaint.

Complainant Conviction History (Encl. 31a-q)

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Conclusions and Recommendations

Officer Identification

PO Zozzaro stated that he attempted to stop § 87(2)(b) and served as his arresting officer. § 87(2)(g)

§ 87(2)(b) PO Sesso and PO Farrell all acknowledged that they assisted PO Zozzaro in apprehending and restraining § 87(2)(b) § 87(2)(f)

§ 87(2)(b)

Undisputed Facts

It is not disputed that § 87(2)(b) was questioned by PO Zozzaro. It is not disputed that § 87(2)(b) refused to answer PO Zozzaro's questions and walked away. It is not disputed that PO Zozzaro, PO Sesso, PO Warner, PO Lewis, PO Farrell, and several other unidentified officers attempted to restrain and subdue § 87(2)(b). It is not disputed that § 87(2)(b) resisted the officers by flailing his arms and refusing to be handcuffed.

Disputed Facts

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Assessment of Evidence

In his CCRB statement, PO Zozzaro stated that he noticed § 87(2)(b) walking and wearing a red bandanna on his head. While § 87(2)(b) insisted that he was only wearing a blue cap, PO Warner and § 87(2)(b) confirmed that § 87(2)(b) was in fact wearing the bandanna. PO Zozzaro stated—and PO Warner later reiterated—that § 87(2)(b) was stopped for “flagging”: the wearing of suspected “gang colors.” The practice of flagging is consistent with the order of the 103rd Precinct's Commanding Officer,

who according to PO Zozzaro, prohibits the wearing of gang colors to counter the high level of criminal gang activity in the area. § 87(2)(b), § 87(2)(g)

PO Zozzaro stated that § 87(2)(b) came back a second time and verbally insulted him, at which point a crowd started to gather: according to PO Zozzaro, § 87(2)(b) came back to call him a “fucking pig” five minutes later, at which point a crowd of 50 to 100 people started to form. PO Zozzaro stated that he started to write § 87(2)(b) a summons § 87(2)(b). However, in her statement PO Warner explained that PO Zozzaro was following § 87(2)(b) solely because of flagging, or the wearing of gang colors. Based on PO Warner’s testimony, in the radio call he sent out, PO Zozzaro only said that § 87(2)(b) was stopped for flagging. PO Zozzaro did not make any mention of a large crowd forming and did not communicate that § 87(2)(b) was guilty of any disorderly conduct during the pursuit of § 87(2)(b). PO Zozzaro also indicated that § 87(2)(b) began to quickly jog away for the length of one block when he requested to see his license. § 87(2)(g) PO Warner, who testified that § 87(2)(b) walking briskly down the street with PO Zozzaro right behind him. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) said that he heard § 87(2)(b) tell PO Zozzaro that he wished to go to the precinct stationhouse to speak to a superior about the policy of wearing do-rags and bandannas. § 87(2)(b) further stated that PO Zozzaro told § 87(2)(b) not to move. § 87(2)(b) did not see § 87(2)(b) come back to PO Zozzaro and insult him as PO Zozzaro attested. § 87(2)(b), § 87(2)(g)

According to § 87(2)(b) a crowd of twenty people formed, but only after the physical struggle with § 87(2)(b) and the officers commenced. Furthermore, § 87(2)(b) did not hear PO Zozzaro tell § 87(2)(b) that he was guilty of blocking pedestrian traffic.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) who witnessed § 87(2)(b) struggling with at least ten officers, confirmed that § 87(2)(b) refused to place his hands behind his back. All the officers interviewed by the CCRB maintained that § 87(2)(b) punched, kicked, pushed, and shoved them upon contact. PO Farrell stated that she had to handcuff § 87(2)(b) from the front, and was pushed by § 87(2)(b) to the ground, thereby sustaining multiple cuts and scrapes to her knees and elbows. Even PO Sesso’s pepper spray was not successful in subduing § 87(2)(b) with him retorting that it “tastes like butter.”

Allegation A: PO James Zozzaro questioned § 87(2)(b)

Allegation B: PO James Zozzaro stopped § 87(2)(b)

PO Zozzaro attested that he questioned § 87(2)(b) informed § 87(2)(b) that he could not wear his bandanna, and requested § 87(2)(b) s identification. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

PO Zozzaro made a communication to PO Warner, who walked up in front of § 87(2)(b) in an attempt to keep him from getting away.

According to Kamins' *Search and Seizure* (Encl. 1a-e), "an officer can approach to request information when there is 'some objective credible reason for that interference not necessarily indicative of criminality.' Thus, the intrusion cannot be arbitrary, based on whim, curiosity, caprice, or a desire to harass." § 87(2)(b), § 87(2)(g)

Kamins' *Search and Seizure* indicates that "while the police have the right to request citizens to answer questions, citizens have the right to refuse to answer them. The refusal to answer cannot, even in itself, permit further action by the police." § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

According to the *Penal Law of the State of New York*, "a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm" he or she "recklessly" creates a risk of several offenses, including the obstruction of vehicular or pedestrian traffic (Encl. 1f). § 87(2)(b), § 87(2)(g)

Allegation C: PO James Zozzaro used physical force against § 87(2)(b)

Allegation D: PO Theresa Sesso used physical force against § 87(2)(b)

Allegation E: PO Theresa Sesso used pepper spray against § 87(2)(b)

Allegation F: PO Christina Farrell used physical force against § 87(2)(b)

Allegation G: Officers used physical force against § 87(2)(b)

In his CCRB testimony, § 87(2)(b) admitted that he was "clasping his hands for protection" and only let the officers handcuff him from behind after a Hispanic officer pleaded with him to stop resisting arrest, after at least fifteen or twenty minutes of vigorously struggling. § 87(2)(b) confirmed that § 87(2)(b) twisted his hands away and did not want to be handcuffed. All the officer statements were consistent in that § 87(2)(b) pushed, shoved, and kicked numerous officers away while they were repeatedly trying to subdue him. PO Farrell, who tried to handcuff § 87(2)(b) from the front, even suffered cuts and scrapes to her knees and elbows after § 87(2)(b) pushed her to the ground and fell on top of her. PO Sesso, who arrived on the scene several minutes after the struggle ensued, characterized § 87(2)(b) as irate, disorderly, and unrelenting. After witnessing § 87(2)(b) push PO Farrell to the ground, PO Sesso decided to mace § 87(2)(b) once. § 87(2)(b), § 87(2)(g)

According to PO Sesso and PO Farrell, the pepper spray was not successful in restraining § 87(2)(b) upon being maced, he exclaimed that the spray "tastes like butter." § 87(2)(b) was finally apprehended and handcuffed after

even more officers arrived and assisted in physically overwhelming him. § 87(2)(b), § 87(2)(g)

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Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: